

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ORVAL FRAZIER,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Case No. C07-5691FDB/JKA

ORDER DENYING PLAINTIFF'S
OUTSTANDING MOTIONS

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Before the court are five filings from plaintiff that need to be addressed. (Dkt. # 9, 10, 15, 16, and 18). The matter is now before the court as plaintiff's motion for appointment of counsel (Dkt # 9) is now ripe for consideration. This motion will be addressed first.

There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court, under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma pauperis*, the court may do so only in exceptional circumstances. Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984); Aldabe v. Aldabe, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances

1 requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to
2 articulate his claims *pro se* in light of the complexity of the legal issues involved. Wilborn, 789 F.2d
3 at 1331. Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. the motion for
4 appointment of counsel is **DENIED**.

5 Plaintiff has filed two “declarations” in this case (Dkt # 10 and 18). These declarations are
6 not in support of any particular motion. These two documents will remain in the file, but may not be
7 cited by either party. Plaintiff is informed that affidavits, declaration, and other supporting
8 documentation, must be attached to a motion in order for them to properly come to the court’s
9 attention.

10 Plaintiff has also filed a motion for an extension of time to respond to an answer containing
11 affirmative defenses. Plaintiff has also filed an answer to the affirmative defenses (Dkt. # 15 and 16).
12 Unless an answer contains a counter claim, no responsive pleading is permitted. The answer in this
13 case does not contain a counterclaim. The motion for an extension of time to respond to the answer,
14 (Dkt. # 15), is **DENIED**. Plaintiff’s answer to affirmative defenses, (Dkt. # 16), will not be
15 considered by the court.

16 The Clerk of Court is directed to send a copy of this Order to plaintiff and to counsel for
17 defendant(s).

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19 DATED this 13 day of February, 2008.

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22 /S/ J. Kelley Arnold
23 J. Kelley Arnold
24 United States Magistrate Judge
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